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SEC

SERVICE DATE – NOVEMBER 3, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42084

CF INDUSTRIES INC v. KANEB PIPE LINE PARTNERS, L.P.
AND KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.

Decided: November 2, 2005

In a complaint filed August 1, 2003, CF Industries, Inc. (CFI) asked the Board to direct Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, Kaneb) to stop charging rates for the pipeline transportation of anhydrous ammonia in excess of those prescribed in CF Industries Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685 (STB served May 9, 2000) (Koch), aff'd sub nom. CF Industries, Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001), and to award reparations for the excess amounts CFI had already paid. Kaneb replied, asking that the Board dismiss the complaint or, in the alternative, vacate the maximum reasonable rate prescription.¹

In a decision served on August 12, 2004, the Board ordered Kaneb to reduce the rates charged to CFI to the level prescribed in Koch, and to pay reparations. But the Board also noted that there could be changed circumstances associated with Kaneb's purchase of the pipeline that might warrant vacating the prescription, and asked for additional evidence on that issue. The parties submitted additional evidence, and an oral argument was held in this case on May 11, 2005. Post-argument briefs were filed in June 2005.

The Board has since learned, through publicly available information, that Kaneb was acquired by Valero L.P. (Valero) by stock purchase in July 2005. Neither Kaneb nor CFI has submitted anything to the Board describing the Valero acquisition or addressing its possible impact on the issues in this proceeding.

The Board does not have sufficient information to determine whether Valero's acquisition of Kaneb might materially affect this case. The Valero acquisition may have resulted in yet another new acquisition price/investment base, which could be either higher or lower than the previous one. The terms of the Kaneb/Valero transaction could shed light on the concerns expressed in FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944), regarding the possibility of a rate spiral created by reliance on acquisition costs to

¹ On October 13, 2004, the Board granted a petition filed by Dyno Nobel Inc. (Dyno) to intervene in this proceeding.

establish an investment base, as well as on other substantive issues raised by the parties here.

Accordingly, Kaneb is directed to submit a supplemental pleading detailing the terms and conditions of Valero's acquisition of Kaneb, including the relevant transaction documents, and the impact, if any, of that transaction on the issues and arguments currently before the Board by November 23, 2005. CFI and Dyno may file a reply by December 5, 2005. After the pleadings are submitted, the parties should be prepared to attend a conference with Board staff.

It is ordered:

1. Kaneb's supplemental pleading is due by November 23, 2005.
2. Replies from CFI and Dyno are due by December 5, 2005.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary